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BOOK NOTE

JUDICIAL POLITICS—AN INTRODUCTION. By *Jerome R. Corsi*. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1984. Pp. xii, 353. \$17.95.

There are more things in heaven and earth, Horatio,
Than are dreamt of in your philosophy.

Hamlet, I.v.

With this statement, Hamlet points out to Horatio that his philosophy ("natural philosophy" or "science")¹ is incomplete because it does not acknowledge that which they have just seen—the ghost of Hamlet's father. In Hamlet's world the ghost existed, in spite of the fact that it lacked recognition in some quarters.

In the book *Judicial Politics—An Introduction*,² Jerome R. Corsi deals with factors which, even if they are officially ignored or only tacitly acknowledged, have a genuine and powerful impact on the structure of the legal profession and the functions of the courts. These factors, unlike the ghost of Hamlet's father, are real. Just as some persons attempted to disregard the ghost, some attempt to disregard these factors. This was and is impossible. In Corsi's view, the legal system (the legal profession and the courts, taken together) is not at all a sterile environment in which interchangeable players make automatic decisions based on legal precedent produced under the same conditions. Instead, the legal system, being a creation of human beings, is subject to social and political manipulations which have a real impact. He asserts: "The legal profession is a social structure and our courts are political institutions. Both are subject to questions that contrast the pretenses of the legal system with its practices" (pp. 4-5).

A "major premise" of Corsi's work is that "the legal profession's social structure and judicial politics are strongly related" (p. 3). In order to understand this relationship, Corsi first examines the players in the system, lawyers and judges, and the environment in which practically all lawyers get started, the nation's law schools. He then turns to the stage on which the players stand, the court system, and from there examines how and on what bases the players interact, and

1 THE COMPLETE WORKS OF SHAKESPEARE 1059 (I. Ribner & G. Kittredge ed. 1971).

2 J. CORSI, JUDICIAL POLITICS—AN INTRODUCTION (1984).

what impact that interaction has on those persons not directly involved in the system.

The book conveys the way a social scientist, and more particularly a political scientist, views the legal profession and the courts (p. 4). Corsi's intent "is to explore the legal profession as a social system and the operation of our various legal dispute resolution mechanisms as judicial politics, and to see the interrelationship between the two" (p. 5).³ Corsi's presentation is refreshing and is worthy of comment.

The legal profession consists of lawyers who practice law and lawyers who act as judges of legal disputes. Corsi begins his examination of the legal profession by looking at one factor common to virtually all its members, law school. He then looks at the structure of the practicing bar, and finally at the recruitment and selection of judges.

Law schools serve as "gatekeepers" (p. 7); those who wish to practice law must first graduate from such an institution. To show the development of this "gatekeeping" function, Corsi traces the history of legal education in America from apprenticeships to formal programs. As the demand for admission rose, the admitting process itself began to serve a gatekeeping function (pp. 16-19). Corsi notes that while standards for admission have risen, law schools have recognized and acted upon the need to train more women and members of minority groups for the practice of law.⁴

Corsi contends that the type of training a student receives while in law school and the school at which that training is received will influence the student's ideological outlook and future practice. Though this may not be evident while the student is still in school, it becomes readily apparent in later years. In his chapter on the practicing bar, Corsi states that "intrinsic ability has historically been less important in securing the best legal jobs than has the proper background and attending the right schools" (p. 54). The opportunity to attend the "right" schools, he contends, has in the past at least been enhanced by social position (p. 54).⁵

In support of his assertion that the proper background and attendance at the right law schools lead to the best legal positions, Corsi reviews several studies initiated both by the American Bar Association and by individuals. These surveys and studies conclude

3 In order to show this interrelationship Corsi relies heavily on studies conducted by others, and readily acknowledges this. *See id.* at 4.

4 Corsi provides statistics which illustrate this point. *See id.* at 17-20.

5 *See id.* at 16-17.

generally that social advantage leads to greater educational opportunity, which increases the chances for a prestigious career (pp. 61-68). Corsi concludes that "[w]hat emerged from these early empirical investigations was a challenge to the myth of a unified legal profession with equal opportunity for all" (p. 68). While the myth has been challenged, it has not yet been totally defeated. Equal opportunity does not mean equal success. The practice of law is still seen by many, however, as virtually guaranteeing a successful career and a comfortable life.

Corsi traces the social developments, primarily industrialization, which have transformed the practicing bar. These changes brought about many more partnerships and resulted in a hierarchical bar, with a few large corporate firms at the top serving industrial concerns, smaller firms in the middle serving smaller businesses, and solo practitioners at the bottom serving individuals (pp. 54-58).

That the bar is hierarchically organized, Corsi states, is well documented. That the bar is also socially stratified, he asserts, is less evident. While studies have concluded generally that the best legal positions go to those with the most prestigious credentials, specific information regarding the lawyers who practice at the various levels of the hierarchy is lacking. Although various subgroups, including Wall Street lawyers, Washington lawyers, criminal lawyers, black lawyers, and Chicago lawyers have been studied,⁶ "a modern comprehensive study of the bar nationwide is sorely needed" (p. 69).

While lawyers are expected to act as advocates for their clients in disputes, judges, Corsi asserts, are commonly viewed as impartial decision-makers who apply the law according to precedent (p. 102). Because judges play such a vital role in the legal process, the means by which they are recruited (the process by which lawyers become candidates for judgeships) and selected (the processes by which judges are chosen from the available candidates) are important. Each mechanism used to select both state⁷ and federal⁸ judges amounts to a "political process with a political result" (p. 153). Ultimately, Democrats want Democratic judges, and Republicans want

6 Corsi reviews these studies in detail. *See id.* at 69-88.

7 Corsi lists and deals with five modern mechanisms for selecting state judges: 1) partisan elections; 2) nonpartisan elections; 3) legislative elections; 4) gubernatorial appointment; and 5) merit plans. *See id.* at 107-14.

8 Judges in the federal court system are appointed by the President with the advice and consent of the Senate. U.S. CONST. art. II, § 2, cl. 2. For a discussion of the political ramifications of the recruitment and selection of federal court judges, see J. CORSI, *supra* note 2, at 117-32, 142-51.

Republican judges. Corsi asserts that virtually no one involved in any way in the recruitment and selection of judges is willing to admit that the process is political. Those involved prefer to articulate that because judges are above politics, the recruitment and selection process is non-political as well (p. 153). Thus, while most persons realize that the recruitment and selection process is political, they are unwilling to admit it.

Having looked at the players in the legal profession, Corsi then turns to their environment—the court system. After examining the court organization at both the state and the federal level, he examines the economic realities and the judicial decision-making processes involved in dispute resolution. He concludes by considering the impact of and compliance with major decisions by the Supreme Court in several areas.

Corsi begins his look at the court system by discussing the organization and function of the system at both the state and the federal level. To provide an historical background, he traces the development of the dual court systems, noting that federalism itself came about as a result of political manipulation. Moving to the present, Corsi examines the structures and functions of state and federal courts, noting especially the problems associated with funding, workloads, and attempts to introduce reform.⁹ Corsi concludes that “a dimension of politics” stands behind the organization of the court systems (p. 200). Cases which can be resolved by following established precedent stay in the lower levels of the organization. The hierarchy then allows cases that call for the formulation of policy to reach the highest levels (p. 200). The effect of this hierarchical organization is to assign more importance and to pay more attention to the cases that reach the highest levels. This is inevitable, given the organization and function of the court systems. Moreover, cases that result in the formulation of policy should be given careful attention. Of course, the cases that remain in the lower levels are just as important (treatment given notwithstanding), if only to those directly involved in the disputes, as are the more complex cases.

Just as policy considerations influence court organizations, economic considerations influence dispute resolutions in the court systems. Economic calculations are a necessary part of the legal system. Lawyers sell their time, and their economic considerations (whether

9 Corsi fills his fact-based chapter on court organization and function with statistics and tables to illustrate points concerning types of cases considered, workloads, and attempts to introduce reform.

to settle a case or to take it to trial, for example) may not always harmonize with those of their clients. These various economic pressures have led to the development of alternatives to lawsuits and criminal proceedings, such as insurance claims adjustments and plea bargains. While no one may wish to admit that a profession dedicated to serving the public and to working for justice must consider and adjust to economic realities, Corsi states that such an admission is unavoidable (p. 251). Furthermore, admitting that such considerations are inevitable could lead to more open and honest dealings between lawyers and clients and among lawyers themselves.

In addition to economic considerations, judicial decision-making influences dispute resolution. Judicial decision-making is not only an application of precedent, but also an interpretation of the law. Judges are human beings, and as such are influenced by human society and politics (p. 269). Therefore, judicial decision-making is a process in which law and precedent are mixed with "personality, prejudice, and politics" (p. 258). Corsi cautions, however, that while intuition suggests that background will influence judges' decisions, no model has quantified this satisfactorily (p. 268). Predicting how particular judges will react to particular issues can be done, but it is an uncertain and risky process. Corsi concludes that while this lack of certainty may be frustrating to a social scientist, the very fact that it cannot be done with consistent success emphasizes that judicial decision-making is not confined merely to an application of precedent, but is influenced by a myriad of social and political factors (p. 270).¹⁰ This situation may well be a positive aspect of the system, because it provides for flexibility in different (and often difficult) factual situations.

While courts base their decisions on rules of law, the impact of these decisions is not limited to the legal arena. Supreme Court decisions, especially, include policy making. The decisions affect various political and social relationships (pp. 301-02). Because the decisions of the Supreme Court have such wide ranging effects, Corsi finds the impact of (the degree to which a decision alters an established policy) and compliance with (the degree to which those affected by a decision alter their behavior to conform to the guidelines of the decision) these decisions noteworthy. Corsi examines four policy areas with which the Supreme Court has dealt: school desegregation;¹¹ prayer

¹⁰ Corsi examines in detail the influence of social and political factors on the decision-making process of the Supreme Court. *See id.* at 270-90.

¹¹ *See Brown v. Board of Educ.*, 347 U.S. 483 (1954).

in public schools;¹² the exclusionary rule;¹³ and reapportionment.¹⁴ Corsi states that the Supreme Court's "decisions are not fixed in stone for all time, and the policy implications of their [the Justices'] opinions are certain to be perceived, analyzed, applauded, and panned by those situated at all points throughout the political spectrum" (p. 328). Furthermore, the Supreme Court's lack of independent enforcement power precludes uniform compliance with its decisions (p. 303).

In his conclusion, Corsi suggests that the lack of a "perfect" system of law is not fatal as long as human beings continue striving to improve the existing legal system, striving which demands constant analysis and evaluation, and promotes improvement (p. 333). Because human beings are engaged in this process, however, the efforts to improve the legal system will always be shaped by politics. This fact should not cause alarm, Corsi states, because "[f]or law to be above politics would demand that human beings be above politics, and that may simply be neither possible nor desirable" (p. 334).

Corsi's organization of the book assists the reader's understanding of the material. Each chapter has an introduction which integrates previous material with the material to be discussed in the present chapter; in addition, each chapter's conclusion provides a succinct guide to the material. The reader exploring the topic for the first time could benefit from reading each chapter's conclusion before reading the chapter itself. A detailed table of contents and a complete index facilitate the reader's access to the many subsections in the various chapters.

Corsi makes extensive use of statistics and studies compiled and conducted by others. He does not, however, burden the reader unnecessarily with graphs and tables. When he does provide a graph or a table to illustrate a point, as he does in his chapter on court organization and function, the illustration is useful. In addition, Corsi acknowledges his use of others' work through the liberal use of footnotes.¹⁵

12 See *School Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

13 See *United States v. Calandra*, 414 U.S. 338 (1974); *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Elkins v. United States*, 364 U.S. 206 (1960); *Weeks v. United States*, 232 U.S. 383 (1914).

14 See *Baker v. Carr*, 369 U.S. 186 (1962).

15 The number of footnotes ranges from a low of 71 in Chapter Seven (Impact and Compliance) to a high of 204 in Chapter Two (Lawyers). The lawyer or academic who enjoys and is accustomed to flipping pages to discover the source of a statistic or a quotation will not be disappointed.

Although Corsi's book is an examination of the legal profession and the courts from the point of view of a political scientist, the reader need not have any training in the law or in political science to understand and enjoy the work. While Corsi resorts occasionally to the tools of political and social scientists, this does not impair the lay reader's grasp of his propositions and explanations.

Corsi offers his work as an introductory study of the interrelationship between the legal profession's social structure and the politics involved in dispute resolution (p. 5). The work neither indicts nor wholly accepts the legal system as it exists today, but instead goes below its surface to identify and examine those factors which shape the system.

The value of Corsi's work is twofold. First, it serves as a good beginning for more detailed studies of the subject. Second, it undermines the myth that the legal system is an undifferentiated organism operating under one set of rules and assumptions. The system is not perfect, and human beings cannot legitimately expect it to be so. As Corsi concludes, "the legal system is not a philosophy—it is a social, economic, and political system" (p. 335). To admit this is not to concede that the system is flawed, but is only to acknowledge that the system is human-made. More importantly, to accept this fact is necessary if the legal system is to continue to develop and improve.

Crystal L. Miller

